

Chapter 17. DEVELOPMENT APPLICATION PROCESS

17.1 Purpose and Intent

In order to establish an orderly process to develop land within the jurisdiction of the City of Salisbury consistent with standard development practices and terminology it is the purpose of this Chapter to provide a clear and comprehensible development process that is fair and equitable to all interests including the petitioners, affected neighbors, City staff and related agencies, Boards and Commissions, and the City Council. The intent of this Chapter is as follows:

- To ensure that land, parcels, and lots are appropriately subdivided so that their use and development complies with all applicable requirements of this Code;
- To ensure that development is in a manner generally harmonious with surrounding properties and without the endangerment of the health, safety, and general welfare of existing, prospective, or future owners, users, surrounding and adjoining properties, and the public; and
- To provide for the adequate and efficient provision of facilities and/ or infrastructure, and the dedication of land, rights-of-way, and easements, so as not to burden the fiscal resources of the City. This includes the construction of buildings and utilities, streets and sidewalks, landscaping, recreational open spaces, and other provisions required for the public good of the City of Salisbury.

The Salisbury City Council shall adopt from time to time, a schedule of fees and review schedule for application and processing as specified in this Code.

17.2 General Applicability

The Provisions of this Chapter shall be applicable to all development activity under the jurisdiction of the City of Salisbury. No building, sign or other structure (except as otherwise provided for in this Code) shall be erected, moved, extended or enlarged or structurally altered, nor shall the use conducted within the building change, nor shall any excavation or filling of any lot for the construction of any building be commenced, nor shall any change in the use of a property be commenced until the Administrator has issued an applicable permit for such work. The issuance of a permit is subject to the required development review process as applicable for the development petition.

No clearing, tree removal, grading or infrastructure work may commence prior to the issuance of a Zoning or Development Permit.

17.3 Public Notification Requirements

Notification of all required public hearings shall be as follows:

- A. Newspaper Notice:** A notice shall be published in a newspaper having general circulation in the City once a week, for two (2) successive weeks, the first notice to be published not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the hearing.

- B. Notice to be Posted in City Hall:** Notice shall also be posted by the Administrator in a conspicuous location in the City Hall at least ten (10) days prior to the public hearing. Both notices shall indicate the nature of the public hearing and the date, time and place at which it is to occur.
- C. Sign to be Posted:** A prominent sign shall be posted on the subject property(ies) beginning not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the hearing. Such notice shall state the date, time and location of the public hearing, and a phone number to contact during business hours for additional information. The sign shall remain until after the decision-making authority has rendered its final decision.
- D. First-Class Mail Notification:** A notice of the proposed section of the proposed action shall be sent by first class mail by the Administrator to the following owners of property as shown on the county tax listing; the property in question, all parcels of land abutting that parcel (including land immediately across a public street or alley), and all parcels of land within 100 feet of that parcel..
- E. Alternate Notification for Rezoning more than 50 Properties:** First-class mailed notification shall not be required when the zoning reclassification action directly affects more than 50 properties, owned by a total of at least 50 different property owners. In this case, the City shall publish once a week for four successive calendar weeks in a newspaper having general circulation in the area with a map showing the boundaries of the area affected by the proposed Code or amendment. The map shall not be less than one-half of a newspaper page in size. The notice shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the City's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to this section. The person or persons mailing the notices shall certify to the City Council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, the City shall post one or more prominent signs on or immediately adjacent to the subject property area reasonably calculated to give public notice of the proposed rezoning.

17.4 ADMINISTRATIVE PERMIT PROCEDURES - General Provisions**A. Permit Not Required**

Notwithstanding any other provisions of this Code, a zoning permit is not required for the following uses:

1. Street construction or repair by NCDOT or the City of Salisbury.
2. Electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right-of-way in accordance with all applicable municipal franchise agreements.
3. Specific signs exempted in Chapter 12.
4. Mailboxes, newspaper boxes, fences, birdhouses, flag poles, pump covers, and doghouses.

B. Waiver of Certain Application Requirements

The Administrator may waive certain application requirements if he determines that the submission of a complete Development Plan in accordance with Chapter 18 would serve no useful purpose.

1. Signs
2. Interior alterations and renovations requiring a county building permit which do not alter the footprint or height of an otherwise conforming use and/ or structure (i.e. HVAC, re-roofing, steps, or siding) except in a designated Historic District, etc.
3. Accessory structures for all building types; or
4. Any enlargement of a principal building by less than twenty percent (20%) of its existing size provided such enlargement will not result in site or landscaping improvements or the expansion of parking areas; or
5. A change in principal use where such change would not result in a change in lot coverage, off-street parking access or other external site characteristics.

C. Application for Zoning Permit Approval Required: Upon receipt of a complete application, the Administrator shall approve, approve with conditions, or deny the application. Applications that are denied shall have the reasons for denial, in writing, attached to the application.

D. Expiration of Permit: Any zoning permit issued in accordance with this Code will lapse and become invalid unless the work for which it was issued is started within six (6) months of the date of issue, or if the work authorized by it is suspended or abandoned for a period of at least one (1) year.

- E. Compliance and Violations:** Zoning permits issued on the basis of dimensional plans approved by the Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications. Use, arrangement, or construction which differ from that authorized by the zoning permit shall be deemed a violation of this Code and shall be subject to civil penalties per Chapter 19.
- F. Right of Appeal:** If a request for a zoning permit is disapproved or if a ruling of the Administrator is questioned, any aggrieved party may appeal such ruling to the Zoning Board of Adjustment in accordance with Section 17.12.
- G. Certificate of Occupancy:** No structure shall be occupied until a Certificate of Occupancy has been issued by the Administrator. Any Certificate of Occupancy issued shall state that the structure or portion of a structure is in compliance with the information stated on the zoning permit and with all applicable provisions of this Code. A record of all certificates of occupancy shall be kept on file in the office of the Administrator and copies shall be furnished, on request, to all interested parties. If a Certificate of Occupancy is denied, the reasons for such denial shall be specified in writing and provided to the applicant. Where certain infrastructure elements have not been installed (i.e. landscaping due to time of year), a temporary certificate may issued by the Administrator.

H. Modification of Dimensional Standards

- 1.** The Administrator is authorized to approve requests that deviate from required setbacks set forth in this Code by up to ten (10%) percent of the required setbacks or 24 inches, whichever is greater except as otherwise provided in 17.13 (A 5), upon determination that one or more of the following conditions exists:

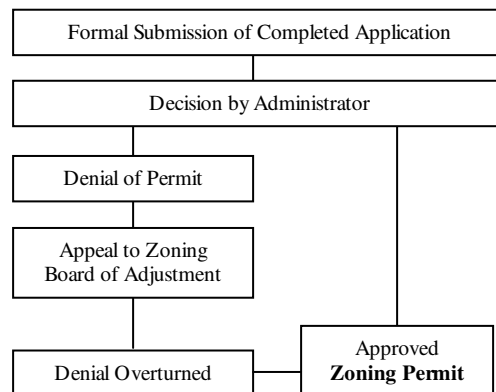
 - a.** There are site or structural conditions that preclude strict adherence to the setback requirements, such as, but not limited to: the lot does not meet the dimensional standards established for the zoning district in which it is located; the lot has topographic limitations that require placement of the structure into the required setback area; or the structure is physically in line with an existing, legally established wall or walls of a principal structure already within the minimum setback area.
 - b.** The part of the proposed structure that would encroach into the minimum setback area is less than 50 percent of the width of the affected building facade(s), provided the part of the structure that would encroach into a front setback shall either be open (such as a porch or screen room) or not subject to occupancy (such as a chimney).
 - c.** The part of the proposed structure that encroaches into the minimum setback area is necessitated by a life-safety code, flood hazard reduction, Americans with Disabilities Act standard, or other public safety code requirements.
 - d.** The proposed structure will allow the preservation of significant existing vegetation.

- e. A good faith error was made in the location of a building foundation not exceeding one (1) foot due to either field construction or survey error.
2. The authority given to the Administrator to grant such modification shall be construed to be permissive and not mandatory and the Administrator may decline to make such modification. In the event this occurs, the applicant shall have the right to submit an application to the Zoning Board of Adjustment to grant a variance to these requirements.
3. Nothing in this section shall be construed as limiting the Administrator's duties and rights under this Chapter, or an applicant's right to appeal the decision of the Administrator to the Zoning Board of Adjustment.

17.5 ZONING PERMITS

- A. **Applicability:** A Zoning Permit is required for the approval of all applications for Single-Family Homes, Signs, and all other Development Applications not otherwise covered by other procedures in this Chapter.
- B. **Procedure:**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Schematic Plan (18.2)	Administrator	Zoning Permit Issued -or- Denial and Request for Resubmission	Zoning Board of Adjustment



17.6 CERTIFICATE OF APPROPRIATENESS

A. Applicability:

- Buildings and Structures in Locally Designated Historic Districts
- Locally Designated Historic Landmarks

B. Certificate of Appropriateness Required:

1. No exterior portion of any building or other structure (including masonry, walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign nor any tree larger than 18 inches in diameter at 4½ feet above the ground shall be erected, altered, restored, moved or demolished on a landmark, or within the historic district, until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the Historic Preservation Commission. However, in the case where a tree may be diseased or severely damaged, it can be removed and shall be replaced with a similar type plant material contained on the plant list of the Design Guidelines with a minor works approval. In addition, nothing in this section would prevent the removal of a tree that is an immediate danger to life or property.

Exterior features shall include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the color, the kind and texture of the building material, the size and scale of the building and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. In the case of outdoor advertising signs, exterior features shall be construed to mean the style, material, size and location of all such signs.

2. Such a certificate shall be issued by the commission prior to the issuance of a zoning permit or other permit granted for purposes of constructing, altering, moving or demolishing structures. A certificate of appropriateness shall be required whether or not a zoning permit is required. Therefore, a certificate of appropriateness is a prerequisite to the issuance of such a zoning permit or such other permits. Any such zoning permits or such other permits not issued in conformity with this section shall be invalid.
3. The State of North Carolina, the City of Salisbury and all public utility companies shall be required to obtain a certificate of appropriateness for landmarks and in the historic district prior to initiating any changes in the character of street paving, sidewalks, utility installations, lighting, walls, fences, structures and buildings on property, easements or streets owned or franchised by the State of North Carolina, the City of Salisbury or public utility companies.

C. Certificate of Appropriateness Not Required:

Examples of specific items which fall under ordinary maintenance or repair that will not require a certificate of appropriateness are:

1. Underground utilities, except where archaeological finds or sites are uncovered;

2. Extension or upgrading of service to customers for equipment such as meters, valves and cleanouts;
3. Changes in type or amount of mechanical equipment such as interfaces, transformers or traffic-control devices on existing overhead lines, poles or ground-mounted installations;
4. Deletion or replacement of poles of standard material and height, not to exceed forty-five (45) feet;
5. Addition or deletion of fire hydrants;
6. Routine replacement of street signs;
7. Any upgrading of facilities to comply with National Electrical Safety Code (NESC) requirements;
8. Addition of equipment on existing lines or poles;
9. Replacement of existing overhead lines, poles or ground-mounted installation.

D. Certificate of Appropriateness for Demolition

1. An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within historic district may not be denied except as provided in paragraph (2) below. However, the effective date of such a certificate may be delayed for a period of up to three hundred sixty-five (365) days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site.
2. An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site or structure determined by the state historic preservation officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where:
 - a. The commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial; or
 - b. The city has adopted a demolition ordinance under the minimum housing code.
3. If the commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the City Council, the demolition or destruction of any building, site or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission for a period of up to one hundred eighty (180) days or until the City Council takes final action on the designation, whichever comes first.

E. Minor Works

A Certificate of Appropriateness application, when determined to involve a minor work, may be reviewed and approved by the Minor Works Committee. The Minor

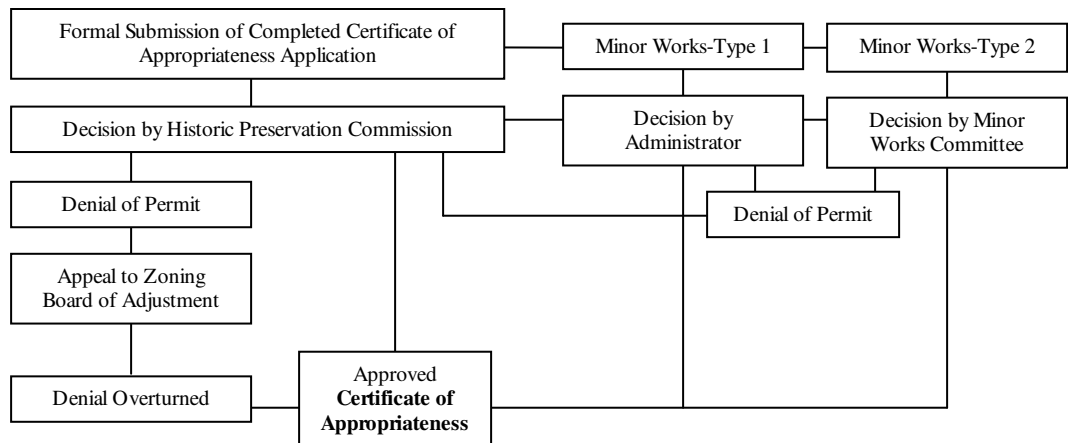
Works committee consists of the Historic Preservation Commission Chairman and Vice-chairman and the Administrator. Minor works are defined as those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the landmark or property in the historic district.

An application may receive a certificate of appropriateness from the committee if it falls under the list of minor works provided in the Historic Preservation Commission Rules of Procedure. If the committee does not issue a Certificate of Appropriateness, the applicant will be advised to make a formal application to the Historic Preservation Commission. No application may be denied without formal action by the Historic Preservation Commission.

- F. Effect of Certification of Appropriateness Approval:** Passage of a motion to approve, with or without modification, an application shall constitute the issuance of a Certificate of Appropriateness by the Historic Preservation Commission. The application and the duly approved minutes of the commission shall constitute the written documentation of such issuance's. Following the meeting a Certificate shall be mailed to the property for which a certificate has been issued. The Certificate shall be posted on the premises, in a location visible from the street, while the work is in progress. Minutes of a Historic Preservation Commission meeting shall be approved before the end of the next meeting.
- G. Expiration of Certificate:** A Certificate of Appropriateness shall be valid for a period of six (6) months from the date of issuance for the purpose of obtaining a Zoning Permit or other permit for constructing or altering structures. A Certificate of Appropriateness shall expire six (6) months after the date of issuance if the work authorized by the certificate has not been commenced. If after commencement the work is discontinued for a period of six (6) months, the permit therefore shall immediately expire.
- H. Demolition by Neglect Prohibited:** In case any building, structure, site, area or object designated as a landmark or located within the historic district is about to be demolished whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the ordinance, the commission or other party aggrieved by such action may institute any appropriate action or proceeding to prevent such unlawful action.

I. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Certificate of Appropriateness – for Minor Works-Type 1 Only w/ Architectural Plans (18.9)	Administrator	COA Issued	Minor Works Committee
Certificate of Appropriateness – for Minor Works-Type 2 Only w/ Architectural Plans (18.9)	Minor Works Committee	COA Issued	Historic Preservation Commission
Certificate of Appropriateness w/ Architectural Plans (18.9) & Schematic Plan (18.3)	Historic Preservation Commission	COA Issued -or- Denial and Request for Resubmission	Zoning Board of Adjustment



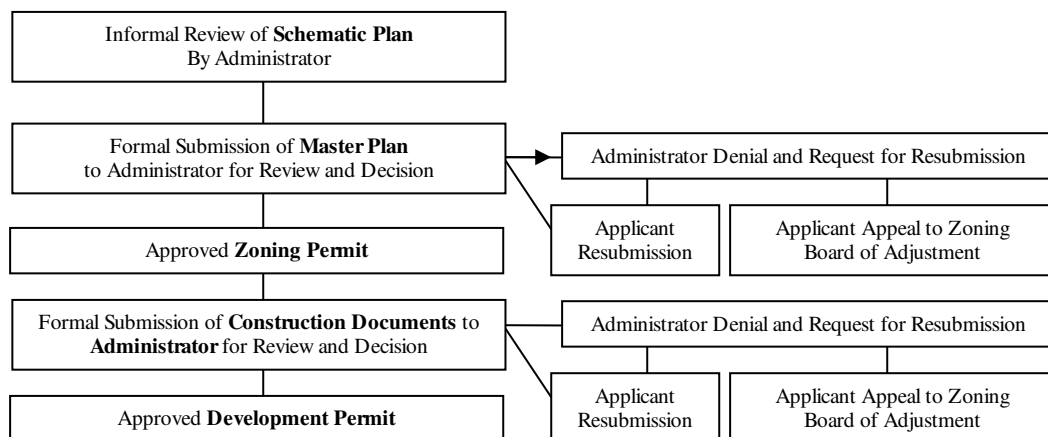
17.7 MINOR SITE PLANS

A. Applicability:

- Duplexes
- Multi-family with less than 8 Units
- Non-residential Development less than 10,000 square feet
- Industrial Development

B. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Schematic Plan (18.3) w/ Environmental Survey (18.2)	Administrator	For Non-Binding Review Only	n/ a
Master Plan (18.3) w/ Environmental Survey (18.2)	Administrator	Review for Completeness & Code Compliance Zoning Permit Issued -or- Denial and Request for Resubmission	Zoning Board of Adjustment
Construction Documents (18.4) (if applicable) w/ Environmental Survey (18.2)	Administrator	Review for Completeness & Code Compliance Development Permit Issued -or- Denial and Request for Resubmission	Zoning Board of Adjustment



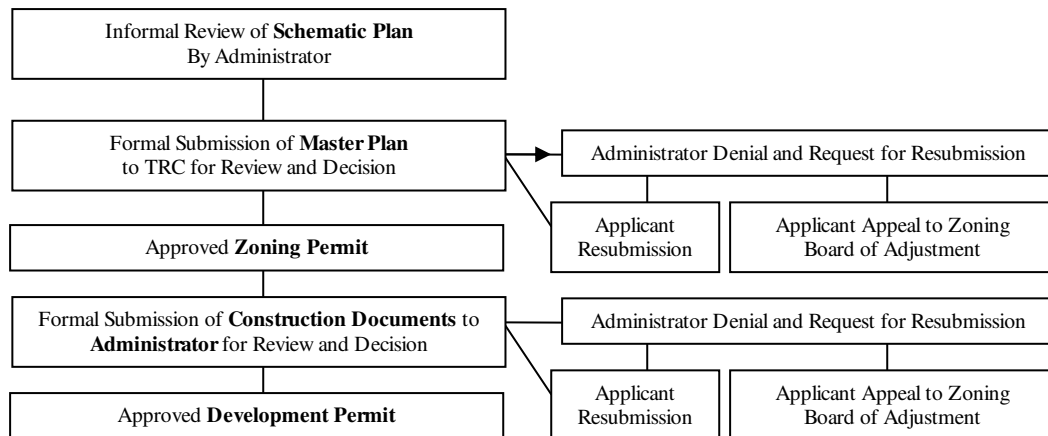
17.8 MAJOR SITE PLANS

A. Applicability:

- Multi-family with 8 or more Units
- Non-residential Development 10,000 square feet or greater

B. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Schematic Plan (18.2) w/ Environmental Survey (18.2)	Administrator	For Non-Binding Review Only	n/ a
Master Plan (18.3) w/ Environmental Survey (18.2)	Technical Review Committee (TRC)	Review for Completeness & Code Compliance Zoning Permit Issued -or- Denial and Request for Resubmission	Zoning Board of Adjustment
Construction Documents (18.4) w/ Environmental Survey (18.2)	Administrator	Review for Completeness & Code Compliance Development Permit Issued -or- Denial and Request for Resubmission	Zoning Board of Adjustment



17.9 ALTERNATE METHODS OF COMPLIANCE

- A. Applicability:** In order to accommodate innovative planning or design ideas for development in any district the Alternate Methods of Compliance process has been created to offer flexibility in the administration of the Design Standards of Chapters 5-11.
- B. Procedure:** A petition for alternate methods of compliance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property upon the submission of a completed application in accordance with the application schedule adopted by the Technical Review Committee (TRC).
1. The TRC may grant a Alternate Methods of Compliance based on any of the following qualifications:
 - a. Because of a specific recognized architectural style (using common architectural reference materials such as **The Elements of Style**) either present or proposed, the provisions enumerated in Chapter 5 preclude their appropriate detailing.
 - b. Changes in technology, building materials, and/ or construction techniques make adherence to the stated details impractical or infeasible.
 - c. The building design presented is worthy of architectural merit and deserves recognition.
 - d. The historic qualities of the building, due to variations in construction technique and applications, are inconsistent with the general vernacular.
 - e. Alternate landscaping plans, plant materials, or planting methods may be used where unreasonable or impractical situations would result from application of landscaping requirements, or where necessary to protect existing vegetation. Such situations may result from streams, natural rock formations, topography, or other physical conditions; or from lot configuration, utility easements, unified development design, or unusual site conditions.
 2. The TRC, in granting a Alternate Methods of Compliance, may prescribe appropriate conditions and safeguards in conformity with this Code. Violation of such conditions and safeguards, when made a part of the terms under which Alternate Methods of Compliance is granted, shall be deemed a violation of this Code and shall be subject to civil penalty as prescribed in Chapter 19 of this Code.
 3. The TRC is not required to grant Alternate Methods of Compliance and may require that the petitioner make an application for a Variance in accordance with Section 17.16.

17.10 SUBDIVISION PROCEDURES - General Provisions

- A. Approval to Proceed with Construction Activity:** Only after receiving Final Plat approval for a Minor Subdivision or Construction Document approval for Major Subdivisions as prescribed by this Chapter and other written approval and necessary permits from the appropriate regulating agencies, shall the developer begin grading, soil erosion, and infrastructure construction for the development.
- B. Master Plans:**
- 1. Approval Duration:** The approval of the Master Plan shall become null and void within two (2) years, unless the developer has completed required improvements (or posted the appropriate guarantee of improvements) and submitted for approval the final plat as required by this ordinance or shall have applied for and received an extension of time from the Administrator. The Technical Review Committee may, at its discretion, require a Master Plan to adhere to any new requirements before granting this extension. If a Master Plan becomes null and void, the subdivider may resubmit for an updated approval; however, the resubmitted Master Plan may be subject to any new requirements for Master Plans, and fees shall be paid at fifty (50) percent of current standard fees.
 - 2. Multiple Phases Not Approved:** Approval of a Master Plan constituting an individual phase of a multi-phase project, which has not been entirely approved, does not constitute approval by the City of any remaining phases. For approved Master Plans consisting of multiple phases, only the phase that is to be developed for sale immediately (or have been guaranteed in accordance with 17.1.C.2 below) shall be submitted for Final Plat approval.
- C. Final Plats:**
- 1. Improvements Required:** The Final Plat shall constitute a complete phase of the approved Construction Documents. No Final Plat shall be approved unless and until the developer has installed in that area all improvements required by this Code or has posted any required improvement guarantees approved by the Administrator and prescribed by this Code in Section 13.8.
 - 2. Plats to be Recorded:** Approved Final Plats must be filed by the applicant for recording with the Register of Deeds of Rowan County within thirty (30) days of the date of approval by the Administrator; otherwise, such approval shall be null and void.

17.11 EXCEPTION PLAT SUBDIVISION

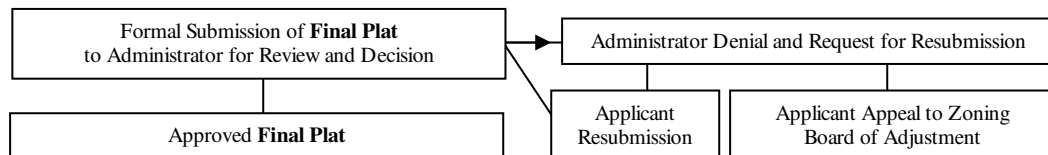
A. Applicability:

An Exception Plat is:

- The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the city as required by this ordinance;
- The division of land into greater than ten (10) acres where no street right-of-way dedication is involved;
- The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors; or
- The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality as required by this ordinance.

B. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Final Plat (18.5)	Administrator	Review for Completeness & Code Compliance Final Plat Issued -or- Denial and Request for Resubmission	Zoning Board of Adjustment



17.12 MINOR SUBDIVISION

A. Applicability:

A Minor Subdivision is a subdivision of land:

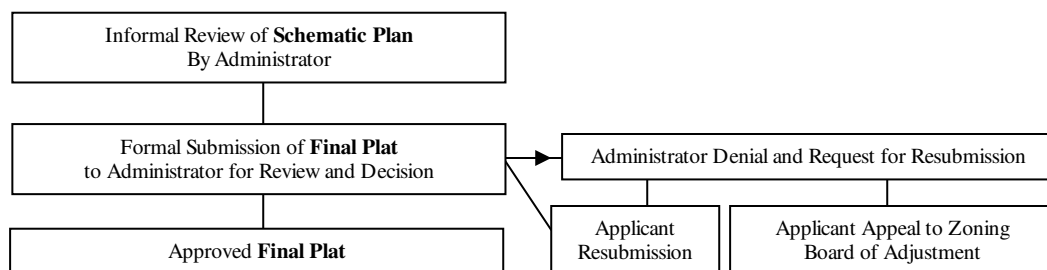
- Involving not more than four (4) lots fronting on an existing approved street; and
- Not involving any new street or prospectively requiring any new street for access to interior property; and
- Not requiring extension of public sewage or water lines to serve properties at the rear; and
- Creating no new or residual parcels not conforming to the requirements of these regulations and related ordinances; and
- Not being located partially or entirely within a WS-IV-PA (Watershed) Zoning overlay

The draft plat must show the location of the nearest public water and sewer systems. Within the city limits, if any portion of the original tract lies within two hundred (200) feet of a public sewer main, or within three hundred (300) feet of a public water line, all newly created lots must have direct access to the respective public utility. If a utility extension is necessary to meet this requirement, the development will not qualify as a minor plat subdivision.

The abbreviated procedure may not be used a second time within three (3) years on any property less than fifteen hundred (1,500) feet from the original property boundaries by anyone who owned, had an option, or any legal interest in the original property at the time the minor subdivision received final plat approval.

B. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Schematic Plan (18.2) w/ Environmental Survey (18.2)	Administrator	For Non-Binding Review Only	n/ a
Final Plat (18.5)	Administrator	Review for Completeness & Code Compliance Final Plat Issued -or- Denial and Request for Resubmission	Zoning Board of Adjustment

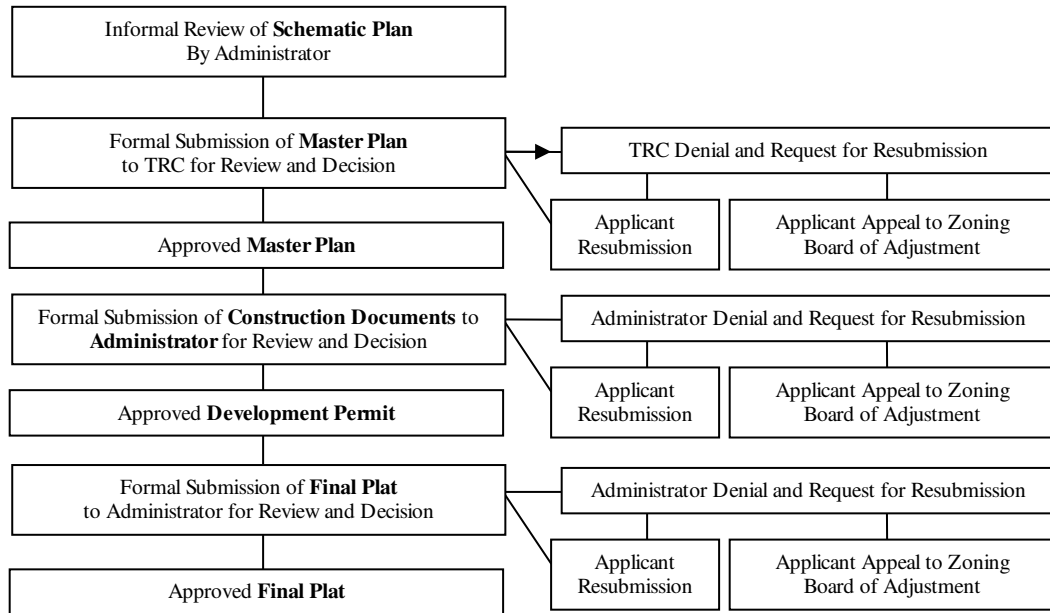


17.13 MAJOR SUBDIVISION**A. Applicability:**

A Major Subdivision is a subdivision of land that exceeds the minimum thresholds for Exception Plats and Minor Subdivisions.

B. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Schematic Plan (18.2) w/ Environmental Survey (18.2)	Administrator	For Non-Binding Review Only	n/ a
Master Plan (18.3) w/ Environmental Survey (18.2)	Technical Review Committee (TRC)	Review for Completeness & Code Compliance Master Plan Issued -or- Denial and Request for Resubmission	Zoning Board of Adjustment
Construction Documents (18.4) w/ Environmental Survey (18.2)	Administrator	Review for Completeness & Code Compliance Development Permit Issued - or- Denial and Request for Resubmission	Zoning Board of Adjustment
Final Plat (18.5)	Administrator	Review for Completeness & Code Compliance Final Plat Issued -or- Denial and Request for Resubmission	Zoning Board of Adjustment



17.14 QUASI-JUDICIAL PROCEDURES – General Provisions

- A. **Purpose:** This Section provides for the discretionary evaluation of certain applications by requiring that certain decisions be made using a “quasi-judicial” procedure with the right of the parties to offer evidence, have sworn testimony, and have findings of fact supported by competent, substantial, and material evidence. Specifically, these quasi-judicial procedures are applied to Administrative Appeals, Variances, and Special Use Permits.
- B. **Judicial Appeals:** Every quasi-judicial decision of the Board of Adjustment or the City Council shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within thirty (30) days after the decision of the Council is filed in the office of the City Clerk, or after a written copy is delivered to every aggrieved party who has filed a written request for such copy with the Administrator at the time of the hearing of the case by the City Council, whichever is later.

17.15 ADMINISTRATIVE APPEALS

- A. **Applicability:** The Zoning Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision, interpretation or citation made by the Administrator, the Technical Review Committee, or the Historic Preservation Commission and apply such interpretation to particular fact situations.
- B. **Applicant with Standing:** An appeal may be made by any aggrieved party or by any officer, department or board of Salisbury who has received a ruling from the Administrator, the Technical Review Committee, or the Historic Preservation Commission upon the submission of a completed application. An appeal to the Zoning Board of Adjustment shall be made within thirty (30) days of the decision, order, determination, or interpretation made by the Administrator. An appeal must be placed on the Zoning Board of Adjustment agenda within 30 days of filing. The filing of any application stays all proceedings unless the Administrator certifies that a stay in his opinion will cause imminent peril to life or property, or, that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the Code. In that event, proceedings shall not be stayed except by a restraining order, which may be granted by the Zoning Board of Adjustment or by a judicial court of law.
- C. **Board Powers and Responsibilities:** The Zoning Board of Adjustment may, after having held a public hearing on the matter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed. The Zoning Board of Adjustment shall have all the powers of the Administrator in making any order, requirement, decision, interpretation or determination with reference to an appeal or petition.
- D. **Supermajority Required:** The concurrent supermajority vote of four-fifths (4/ 5) of the voting members of the Zoning Board of Adjustment shall be necessary to make an interpretation of the Code, reverse any order, requirement, or decision or determination of the Administrator. In all matters coming before the Zoning Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. All decisions of the Zoning Board of Adjustment shall be in writing and filed with the Administrator.

17.16 VARIANCES

- A. **Applicability:** When practical difficulties, special conditions, or unnecessary hardships would result from carrying out the strict letter of this Code, the Zoning Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of this Code.
- B. **Applicant with Standing:** A petition for a variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property upon the submission of a completed application. The filing of any application stays all proceedings unless the Administrator certifies that a stay in his opinion will cause imminent peril to life or property, or, that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the Code. In that event, proceedings shall not be stayed except by a restraining order, which may be granted by the Zoning Board of Adjustment, City Council or by a judicial court of law.
- C. **Required Findings of Fact:** The Zoning Board of Adjustment may only grant a variance having first held a public hearing on the matter and having made the following determinations:
1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Code; and
 2. That the variance is in harmony with the general purpose and intent of this Code and preserves its spirit; and
 3. That in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done; and
 4. That the reasons set forth in the application justify the granting of a variance, and that the variance is a minimum one that will make possible the reasonable use of land or structures.
 5. That if the applicant complies with the provisions of this Code, can secure no reasonable return from, nor make any reasonable use of the property.

The following are not cause for a variance:

- The citing of other nonconforming or conforming uses of land or structures in the same or other districts.
 - The request for a particular use expressly, or by inference, prohibited in the district involved.
 - Economic hardship or the fact that property may be utilized more profitably with a variance.
- D. **Board May Apply Conditions to Motion:** The Zoning Board of Adjustment, in granting a variance, may prescribe appropriate conditions and safeguards in conformity with this Code. Violation of such conditions and safeguards, when made a part of the

terms under which a variance is granted, shall be deemed a violation of this Code and shall be punishable as prescribed in Chapter 19.

- E. Supermajority Required for Decision:** The concurrent, supermajority vote of four-fifths (4/ 5) of the voting members of the Zoning Board of Adjustment shall be necessary to grant a variance. In all matters coming before the Zoning Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. All decisions of the Zoning Board of Adjustment shall be in writing and filed with the Administrator.
- F. Time for Decision:** Except for minor variances noted in Section 17.16.G.1, the Zoning Board of Adjustment shall hold a public hearing on an application no later than 60 days after a complete application has been filed with the Administrator. The Zoning Board of Adjustment shall decide on the matter which was presented at the public hearing within 31 days of the close of the public hearing.

G. Watershed Variances

- 1. Minor Variances:** The Zoning Board of Adjustment has the authority to approve a minor watershed variance if the affected area is 10% or less.
- 2. Major Variances:** All decisions regarding the recommendation of a major watershed variance to the Water Supply Watershed Protection requirements of this Code shall be forwarded to the North Carolina Environmental Management Commission along with all supporting information including, but not limited to:
 - The variance application;
 - Evidence that proper notification of the public hearing had been made;
 - A summary of all evidence presented including comments from other local governments;
 - Proposed findings and exceptions;
 - The Planning Board's recommendation, including all conditions proposed to be added to the permit.

If the Environmental Management Commission (EMC) approves the major watershed variance application, any conditions, stipulations or modifications it requires shall become part of any zoning permit subsequently issued by the City. If the EMC denies the application, the City shall not accept an application for a similar variance request affecting the same property(ies) for a period of one (1) year following the date of denial. All notification of the decision of the EMC to the applicant shall be by first class mail within five (5) days of receiving notification from the EMC. Major watershed variances shall not be authorized until final approval by the North Carolina Environmental Management Commission (EMC).

- 3. Time Limit on Approval:** If an application for a minor variance is approved by the Zoning Board of Adjustment, the owner of the property shall have the

ability to (i) develop the use in accordance with the stipulations contained in the variance or (ii) develop any other use listed as a "permitted use" for the zoning district in which it is located.

Unless otherwise authorized by the Zoning Board of Adjustment and included in its decision to grant a variance, an order of the Zoning Board of Adjustment in granting a variance shall expire, if a building permit, or Certificate of Occupancy (for a use for which a building permit is not required), has not been obtained within one (1) year from the date of its decision.

- H. Rehearings:** An application for a rehearing shall be made in the same manner as provided for an original hearing within a period of fifteen (15) days after the date of the Zoning Board of Adjustment's decision. In addition, specific information to enable the Zoning Board of Adjustment to determine whether or not there has been a substantial change in facts, evidence, or conditions in the case, shall be presented in writing or graphically. A rehearing shall be denied by the Zoning Board of Adjustment, if, in its judgment, such change in facts, evidence or conditions has not been proven. A public hearing shall not be required to be held by the Zoning Board of Adjustment to consider holding such a rehearing. Approval of said consideration shall, however, require an affirmative vote of at least four (4) voting members. In the event that the Zoning Board of Adjustment finds that a rehearing is warranted, it shall proceed as in the original hearing except that the application fee shall be waived.
- I. Effect of Denial-Time to Resubmit:** Upon the denial of an original application, or upon the denial of an application from which a rehearing has been conducted, a similar application may not be filed for a period of one year after the date of denial of the original application.

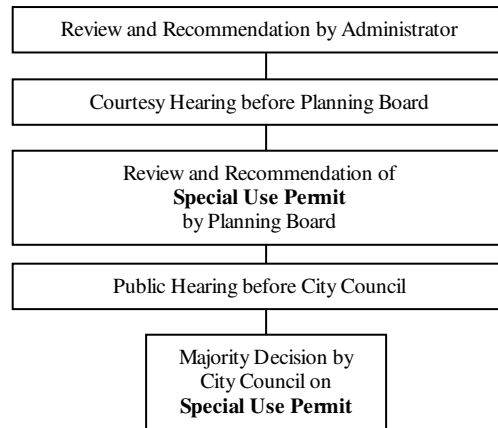
17.17 SPECIAL USE PERMITS

- A. Purpose:** Special uses are generally compatible with the land uses permitted by right in a zoning district, but which require individual review of their location, design, and configuration so as to evaluate the potential for adverse impacts on adjacent property and uses. Special uses ensure the appropriateness of the use at a particular location within a given zoning district.
- B. General Requirements:**
1. Only those uses enumerated as Special Uses in a zoning district shall be authorized by the City Council.
 2. The evaluation and approval of the Special Use Permit shall be based upon the sworn testimony and evidence presented at the hearing relevant to the following Findings of Fact:
 - a. The use meets all required principles and specifications of the Code and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; and
 - b. The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area; and
 - c. The public health, safety, and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed.
 3. In approving an application for a Special Use Permit, the City Council may attach fair and reasonable conditions which support the required Findings of Fact. The City Council may not require the landowner to waive a vested right as a condition of the Special Use Permit approval. The burden of proof of producing evidence to support these Findings and to overcome any challenges that approval of the plan would be contrary to one or more of these Findings shall rest entirely with the applicant or landowner.
- C. Procedures:**
1. The processing of a Special Use Permit shall be conducted by the City Council. During the public hearing, all parties presenting testimony and evidence shall be duly sworn. Testimony both in favor and against the Special Use District application shall be presented and will be considered in formulating the Findings-of-Fact required for a decision.
 2. The Salisbury City Council may attach reasonable and appropriate conditions on the location, nature, and extent of the proposed use. The applicant shall have up to thirty (30) calendar days to consider and respond to any additional requirements prior to approval or denial by the City Council.

- D. Effect of Approval:** If an application is approved, the Special Use Permit that is established and all conditions which may have been attached to the approval are binding on the property. All subsequent development and use of the property must be in accordance with the approved plan and conditions. The applicant must record the approved Special Use Permit and submit a copy to the City.
- E. Substantial Changes:** Any substantial change to a Special Use Permit that results in the increase of the intensity, density, or character of the use shall approved or denied by the City Council as an amended Special Use Permit. Minor field alterations or minor revisions to approved Special Use Permits may be approved by the Administrator if the Special Use still meets the intent of the standards established with the original approval.
- F. Rescission of Special Use Permits:**
1. The applicant must secure a valid building permit within a twelve (12) month period from date of approval of the Special Use Permit unless otherwise specified.
 2. If such project is not complete and a valid building permit is not in place at the end of the twelve (12) month period, the Administrator shall notify the applicant of either such finding. Within thirty (30) days of said notification, the Administrator shall make a recommendation concerning the rescission of the Special Use Permit to the City Council. The City Council may then rescind the special use, or extend the special use district for a specified period of time.

G. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Special Use Permit w/ Master Plan (18.4)	Administrator	Review submittal procedures and requirements Review for completeness & code compliance. Issue Staff Report	n/ a
	Planning Board	Courtesy hearing	n/ a
	Planning Board	Review and recommendation of Special Use Permit application	n/ a
	City Council	Public hearing	n/ a
	City Council	Approval of Special Use Permit – or – Denial and Request for Rehearing	Superior Court



17.18 LEGISLATIVE PROCEDURES – General Provisions

- A. Purpose:** The purpose of this Section is to establish uniform procedures for processing matters requiring a legislative approval process.
- B. Amendments and Regulations Pertaining to a WS District:** Under no circumstances shall the City Council adopt any amendment, addition, or deletion that would cause these regulations to violate the watershed protection rules as adopted by the North Carolina Environmental Management Commission. Any amendment to the boundaries of a Water Supply Watershed District or to the text of this Code related to Watershed Protection shall be referred to the North Carolina Division of Water Quality for their review prior to adoption.
- C. Courtesy Hearings & Public Hearings:** Prior to the determination of a recommendation on a valid petition, the Planning Board will conduct a Courtesy Hearing. Notice of this Courtesy Hearing shall be conducted in accordance with Section 17.3.
- D. Protest Petitions**

 - 1. In case of protest against an amendment, duly signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change or of those immediately adjacent either in the rear or on either side extending one hundred (100) feet there from or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, such amendment shall not become effective except by a favorable vote of four-fifths (4/ 5) super majority of all the members of the City Council rather than by majority decision.
 - 2. No protest against any proposed amendment shall be valid or effective unless it is in the form of a written petition actually bearing the signatures of the required number of property owners and stating that the signers do protest the proposed change or amendment. All such petitions shall be filed in the office of the City Clerk for validation at or before 12:00 noon not less than three (3) working days before the date of the City Council meeting.
- E. City Council Decision:** Once the public hearing has been conducted the City Council shall render a decision on the petition. All decisions shall be by simple majority vote unless a valid Protest Petition has been submitted in accordance with Section 17.8.G.

 - 1. A decision concerning a petition for rezoning shall be as follows:

 - a. Grant the rezoning as requested; or,
 - b. Grant the rezoning with a reduction in the area requested; or,
 - c. Grant the rezoning to a more restrictive general zoning district; or,
 - d. Grant the rezoning with a combination of b and c above; or,
 - e. Deny the application.
 - 2. A decision concerning the petition to amend the text of this Code shall be as follows:

- a. Adoption of the amendment as written; or,
- b. Adoption of the amendment as revised; or,
- c. Rejection of the amendment.

F. Rehearing

- 1. An application for a rehearing shall be made in the same manner as provided for an original hearing within a period of fifteen (15) days after the date of the City Council decision.
- 2. Specific information to enable the City Council to determine whether or not there has been a substantial change in facts, evidence, or conditions in the case, shall be presented in writing or graphically.
- 3. A rehearing shall be denied by the City Council, if, in its judgment, such change in facts, evidence or conditions have not been proven.
- 4. A public hearing shall not be required to be held by the City Council to consider holding such a rehearing. Approval of said consideration shall, however, require an affirmative vote of at least four (4) voting members. In the event that the City Council finds that a rehearing is warranted, it shall then proceed as in the original hearing except that the application fee shall be waived.
- 5. Upon the denial of an original application, or upon the denial of an application from which a rehearing has been conducted, a similar application may not be filed for a period of one year after the date of denial of the original application.

G. Appeals: Every legislative decision of the City Council shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within thirty (30) days after the decision of the Council is filed in the office of the City Clerk, or after a written copy is delivered to every aggrieved party who has filed a written request for such copy with the Administrator at the time of the hearing of the case by the City Council, whichever is later.

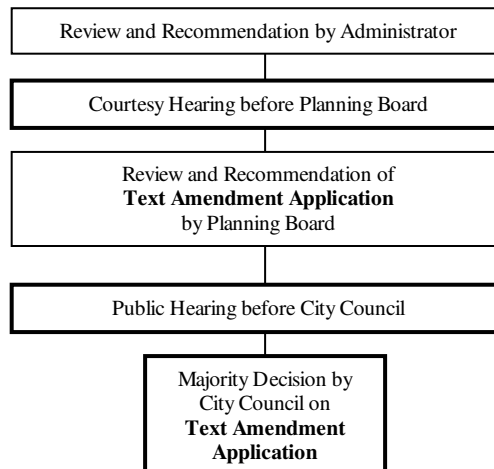
H. Application Withdrawal

- 1. The petitioner may withdraw his application before submission of the public notice to the newspaper announcing the public hearing.
- 2. After submission of such notice, an application may be withdrawn at the discretion of the Planning Board or City Council at the public hearing.
- 3. No more than two (2) withdrawals may occur on the same parcel or portion of land within a one (1) year period.
- 4. No application shall be filed on the same parcel or portion of land within a one (1) year period after the date of the second withdrawal.

17.19 TEXT AMENDMENTS

- A. Purpose:** The purpose of this Section is to establish uniform procedures for amending the text of the Code.
- B. Application Required:** An amendment to the Official Zoning Map or to the text of this Code may be initiated by the City Council, the Planning Board, the Administrator, or any private citizen by filing an application with the Administrator.
- C. Procedure:**

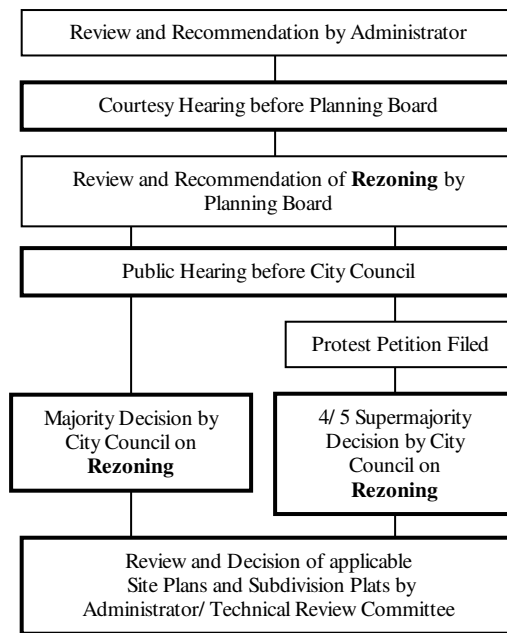
APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Text Amendment	Administrator	Review submittal procedures and requirements Review for completeness & code compliance. Issue Staff Report	n/ a
	Planning Board	Courtesy hearing	n/ a
	Planning Board	Review and recommendation of Text Amendment application	n/ a
	City Council	Public hearing	n/ a
	City Council	Text Amendment Adoption – or – Denial and Request for Rehearing	Superior Court



17.20 MAP AMENDMENTS (Rezoning)

- A. Purpose:** The purpose of this Section is to establish uniform procedures for amending the zoning classification of land as shown on the Official Zoning Map.
- B. Application Required:** An amendment to the Official Zoning Map or to the text of this Code may be initiated by the City Council, the Planning Board, the Administrator, or any private citizen by filing an application with the Administrator.
- C. Procedure:**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Map Amendments	Administrator	Review submittal procedures and requirements Review for completeness & code compliance. Issue Staff Report	n/ a
	Planning Board	Courtesy hearing	n/ a
	Planning Board	Review and recommendation of Rezoning application	n/ a
	City Council	Public hearing	n/ a
	City Council	Grant Rezoning – or - Denial and Request for Rehearing	Superior Court



17.21 CONDITIONAL DISTRICTS

- A. **Purpose:** The purpose of the Conditional Districts is to provide a procedure for the rezoning of property based upon the recognition that certain types of zoning districts would be inappropriate at particular locations in the absence of special conditions. The Conditional District process allows certain uses to be established in accordance with specific standards, assuring the compatibility of the use with the surrounding properties and the area in general, for each proposed district. This process affords a degree of certainty in land use decisions not possible when rezoning to a general category allowing many different uses.
- B. **General Requirements:**
1. **Applicant:** Conditional District classification shall only be considered upon the request of the owners and/ or their representatives of all the property to be included.
 2. **Standards of Underlying District to be Met:** All standards and requirements of the corresponding zoning district shall be met, except to the extent that the conditions imposed are more restrictive than those standards. Within an approved Conditional District, no use shall be permitted except pursuant to the conditions imposed on the Conditional District in the approval of the rezoning. The City Council may impose additional reasonable and appropriate conditions or safeguards to serve the purpose and intent of this Section, and to preserve public welfare, and justice.
 3. **Content of Application:** The Master Plan, as a site specific Conditional Zoning Plan, is itself a condition of the Conditional District rezoning. In addition to the Master Plan, the applicant shall provide the exact land use classifications proposed for the Conditional District. Such use classifications may be selected from any of the uses, whether permitted, by right or conditional, allowed in the general zoning district upon which the Conditional District is based. Uses not otherwise permitted within the general zoning district shall not be permitted within the Conditional District.
 4. **Fair and Reasonable Conditions:** The Planning Board may recommend and the City Council may attach reasonable and appropriate conditions including but not limited to the location, nature, hours of operation and extent of the proposed use. The applicant will have a reasonable opportunity to consider and respond to any additional requirements proposed by either the Planning Board or the City Council prior to final action.
 5. **Decisions:** Decisions by the City Council shall be by majority vote, unless a valid Protest Petition in accordance with Section 17.8 G has been filed, in which case, a four-fifths (4/ 5) supermajority vote shall be required for approval.
- C. **Substantial Changes:** Any substantial change to a Major Development Plan that results in a net increase to the number of lots or a change in building size, location or appearance, or a change in parking or traffic patterns shall be reviewed by the Planning Board and approved or denied by the City Council as an amended Conditional District.

D. Rescission of Conditional Districts: The Applicant must secure a valid building or construction permit(s) within a twelve (12) month period from date of approval of the Conditional District unless otherwise specified. If such project is not complete and a valid building or construction permit is not in place at the end of the twelve (12) month period, the Administrator shall notify the applicant of either such finding. Within sixty (60) days of notification, the Administrator shall make a recommendation concerning the rescission of the Conditional District to the City Council. The City Council may then rescind the Conditional District, or extend the life of the Conditional District for a specified period of time.

E. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Rezoning w/ Master Plan (18.4)	Administrator	Review submittal procedures and requirements Review for completeness & code compliance. Issue Staff Report	n/ a
	Planning Board	Courtesy hearing	n/ a
	Planning Board	Review and recommendation of Conditional District application	n/ a
	City Council	Public hearing	n/ a
	City Council	Grant Conditional District – or – Denial and Request for Rehearing	Superior Court

17.22 VESTED RIGHTS

- A. General Procedures:** Pursuant to G.S.160A-385.1 and notwithstanding any other provision or amendment, a landowner may apply for approval of a Site-Specific Development Plan as defined in the statute that shall entitle said landowner to develop property in accordance with the previously approved plan.

All requests for Vested Rights shall be accompanied by a copy of the approved Site-Specific Development Plan (Master Plan) in accordance with the provisions of this Chapter. A request to extend Vested Rights to a previously approved Site-Specific Development Plan shall be reviewed and approved by the City Council after notice and public hearing.

- B. City Council Action:** The City Council shall determine whether or not to grant or establish a vested right. The City Council may not require the landowner to waive his vested right as a condition of development approval. The City Council may approve the vested rights for a period greater than two (2) years where it is found that due to (i) the sizing and phasing of the development; or (ii) the level of investment; or (iii) the need for the development; or (iv) economic cycles; or (v) market conditions, building permits for all phases of the development cannot be secured within two years, provided the total period does not exceed five (5) years from the date of plan approval of the site.

- C. Effect of Approval of Vesting:** The effect of the City Council approving a vested plan shall be to vest such site plan for a period of two (2) years to five (5) years as approved by the City Council from the date of approval.

A vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the approved site-specific development plan as provided for in this Section. Failure to abide by the terms and conditions placed upon such approval will result in the forfeiture of the previously granted or established vested right.

A vested right, once established shall preclude any zoning action by the City which would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property in accordance with the approved Site-Specific Development Plan except under the following conditions where such rights are terminated and revoked:

1. The affected landowner provides written consent to the City of his desire to terminate the vested right; or,
2. The City determines after having advertised and held a public hearing, that natural or man-made hazards exist on or in the immediate vicinity of the property which pose a serious threat to the public health, safety and welfare if the project were to proceed as indicated in the plan; or,
3. Compensation is made by the City to the landowner for all costs, expenses, and other losses incurred including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and any other

consultant's fees incurred after approval together with interest thereon at the legal rate until paid; or,

4. The City determines, after having advertised and held a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the City Council of the plan; or,
5. Upon the enactment of a State or Federal law or regulations which precludes development as shown in plan. In such case the City may, after having advertised and conducted a public hearing, modify the affected provisions upon a finding that this change in State or Federal law has a fundamental effect on the plan.

Once a vested right is granted to a particular plan, nothing in this section shall preclude the City from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are consistent with the original approval.

The establishment of a vested right on a piece of property for a site-specific development plan shall not preclude the City from establishing and enforcing on the property any additional regulations (adopted during the time the vested right was in effect) which are general in nature and applicable to all property subject to the regulations of this Code.

- D. **Establishment of Common Law Vesting Plans:** Previously approved Site-Specific Development Plans shall be reviewed for compliance and consistency and subsequently approved by the Administrator or designee in accordance with the provisions of this Chapter, providing the proposed Construction Documents for the Site Plan or Subdivision do not deviate from, and is subdivided/ developed in accordance with the previously approved site specific plan. Substantial financial investment must be determined and a good faith effort made to develop proportionate to the approved statutory vested plan.
- E. **Revocation or Expiration of a Vested Right:** The vested right, resulting from the approval of a site-specific development plan, may be revoked by the City Council if the City Council determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of this Code. As prescribed under the provisions of G.S.160A-385.1, the vested right shall otherwise expire at the end of the approval period established by the City Council. A building permit issued by the Rowan County Building Inspector pursuant to G.S. 160A-417 may not expire or be revoked because of the running of time on a piece of property while a plan has been approved and the vested right period has not otherwise expired.

F. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Vested Right Application w/ Master Plan (18.4)	Administrator	Review submittal procedures and requirements Review for completeness & code compliance. Issue Staff Report	n/ a
	City Council	Public hearing	n/ a
	City Council	Grant Vested Right Application – or - Denial and Request for Rehearing	Superior Court

